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COLLISION AT SEA: THE IRRECONCILABILITY OF THE SUPERSEDING CAUSE AND PURE COMPARATIVE FAULT DOCTRINES IN ADMIRALTY

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Abstract: Courts have long sought to develop rational methods both for limiting a tortfeasor's liability and allocating damages among multiple tortfeasors. Courts developed the doctrine of proximate cause to address the first concern, employing superseding cause analysis when multiple forces produce an injury. In admiralty, the U.S. Supreme Court resolved the second concern by adopting pure comparative fault in *United States v. Reliable Transfer Co.* In *Exxon Co. v. Sofec, Inc.*, the Court endorsed the continued use of superseding cause in admiralty cases, holding that it does not conflict with pure comparative fault. This Comment argues that the *Sofec* Court's method of superseding cause analysis does indeed conflict with pure comparative fault and should therefore be abandoned. This Comment concludes that superseding cause, regardless of its method of analysis, does not add to the doctrine of proximate cause and should be eliminated.

In *United States v. Reliable Transfer Co.*, the U.S. Supreme Court adopted the pure comparative fault rule for allocating damages in admiralty collision cases.[1] This method of allocation replaced the divided damages rule,[2] which required equal division of damages among all parties whose fault contributed to the injuries.[3] The demise of the major-minor fault rule, which exonerated a party whose fault was slight, came with the abandonment of the divided damages rule.[4]

Twenty-two years after *Reliable Transfer*, the Court revisited admiralty collision law in *Exxon Co. v. Sofec, Inc.*[5] In *Sofec*, the Court held that the doctrine of superseding cause had survived *Reliable Transfer*.[6] Superseding cause allows a tortfeasor to escape liability where the court finds that a subsequent act broke the causal chain between the prior act and the ultimate harm.[7] As used by the *Sofec* Court, superseding

1. 421 U.S. 397, 411 (1975).

2. *Id.* at 410–11.

3. The Schooner Catharine v. Dickinson, 58 U.S. (17 How.) 170, 177 (1854).

4. *Reliable Transfer*, 421 U.S. at 406.

5. 517 U.S. 830 (1996). *Sofec* actually involved a grounding, rather than a collision. The same principles apply to allisions, collisions, groundings, and strandings. This Comment denotes this body of law as admiralty collision law.

6. *Id.* at 832.

7. *Id.* at 837–38.

cause directly conflicts with pure comparative fault and marks a return to the overruled major-minor fault rule.

Part I of this Comment describes the divided damages, major-minor fault, and pure comparative fault rules. Part II explains the application of proximate cause and superseding cause in admiralty. Part III discusses the three methods for analyzing superseding cause—the foreseeability, remoteness, and culpability methods—and how the culpability method, which was used in *Sofec*, conflicts with comparative fault and marks a return to the major-minor fault rule. Part IV explains how the *Sofec* Court could have reached the same result without creating the conflict by using traditional proximate cause notions. Part V argues that the foreseeability and remoteness methods of superseding cause analysis add nothing to proximate cause doctrine. This Comment then urges courts to discontinue the use of superseding cause, regardless of the method of analysis, in the admiralty context.

I. ALLOCATION OF DAMAGES IN ADMIRALTY

A. Divided Damages

Before 1975, American courts sitting in admiralty allocated damages in collision cases according to the "divided damages" or "moieties" rule.[8] American jurisprudence inherited the rule from England,[9] although no American decision mentioned it until 1836,[10] and the U.S. Supreme Court did not expressly adopt it until 1854.[11] The rule initially applied only to collisions between two vessels,[12] but courts soon extended it to collisions involving three or more vessels,[13] and to allisions,[14] groundings,[15] and strandings.[16]

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8. *Reliable Transfer*, 421 U.S. at 410–11. This Comment uses only the term "divided damages" to describe this rule of law.

9. *Id.* at 402. The first record of the use of the divided damages rule in English law appears in William Welwod, *An Abridgment of All Sea-Lawes* 45–46 (London, Humphrey Lownes 1613). It can be traced at least as far back as the twelfth century and the Laws of Oleron. Dennis A. Goschka, *Goodbye to All That!—The Unlamented Demise of the Divided Damages Rule*, 8 J. Mar. L. & Com. 51, 58 (1976).

10. *See* Ralston v. The States Rights, 20 F. Cas. 201, 208 (E.D. Pa. 1836) (No. 11,540).

11. *See* The Schooner Catharine v. Dickinson, 58 U.S. (17 How.) 170, 177 (1854).

12. *Id.*

13. *See, e.g.*, The Alabama & The Game-cock, 92 U.S. 695, 696 (1875).

14. *See, e.g.*, Atlee v. Packet Co., 88 U.S. (21 Wall.) 389 (1874). For a definition of allision, see *infra* note 17.

Where more than one party was at fault for a collision,[17] the divided damages rule required that damages be divided among them equally.[18] Hence, in a collision involving two vessels, both of which are at fault, the court added the vessels' combined damages and divided by two. It then awarded the vessel suffering greater damages a decree in the amount of the difference between her damages and half the total damages, regardless of the relative fault of the parties.[19] Thus, for example, a vessel only ten percent at fault for the collision would still be responsible for up to fifty percent of the damages.[20]

B. Major-Minor Fault

Courts created the major-minor fault rule to avoid the harsh results mandated by the divided damages rule.[21] The rule did not replace the divided damages rule, but rather provided a means of circumventing it in some cases.[22] Originally, the rule was evidentiary in nature and operated as a presumption in favor of the party whose fault was minor:

> [W]here one vessel clearly shown to have been guilty of a fault, adequate in itself to account for the collision, seeks to impugn the management of the other vessel, there is a presumption in favor of

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15. *See, e.g.*, White Oak Transp. Co. v. Boston, Cape Cod & N.Y. Canal Co., 258 U.S. 341 (1922). Traditionally, a grounding occurred when a vessel ran into the bottom, while a stranding occurred when a vessel ran into the beach. *The Merriam-Webster Dictionary* 316, 675–76 (1974). Today, the terms are often used interchangeably. *See, e.g.*, United States v. Reliable Transfer Co., 421 U.S. 397, 400 n.1 (1975) (referring to stranding as grounding).

16. *Reliable Transfer*, 421 U.S. at 400 n.1 (recognizing long-settled principle that divided damages rule applies to cases like *Reliable Transfer*, which involved stranding).

17. Technically, a "collision" involves two (or more) vessels. An "allision" occurs between a vessel and an object other than a vessel. *Black's Law Dictionary* 28, 109 (Pocket ed. 1996). In this Comment, when used without reference to a specific allision or collision, the term "collision" encompasses both types of accidents.

18. The Schooner Catharine v. Dickinson, 58 U.S. (17 How.) 170, 177 (1854).

19. *See, e.g.*, National Bulk Carriers v. United States, 183 F.2d 405, 410 (2d Cir. 1950) (expressing that although appropriate proportion of damages would be approximately five to one, divided damages rule required equal division).

20. The vessel's portion would be less than 50% if there were more than two responsible parties. For example, where three parties were at fault for the collision, each vessel would pay one-third of the damages.

21. The major-minor fault rule was established in *The City of New York*, 147 U.S. 72, 85 (1893).

22. *See, e.g.*, The Umbria, 166 U.S. 404, 409 (1896).

> the latter, which can only be rebutted by clear proof of a contributing fault.[23]

However, the life of the major-minor fault doctrine as a procedural rule was short-lived.

Three years after its inception, the major-minor fault rule changed from an evidentiary burden of proof rule to a substantive rule exculpating the party whose fault was minor.[24] The rule, in its revised form, excused the slight fault of one party where the other party's fault was very great.[25] Exemplificative cases include *The Columbian*[26] and *Villain & Fassio E Compagnia v. T/S E.W. Sinclair*.[27]

In *The Columbian*, the ocean steamer, *The Columbian*, collided with the fishing schooner, *Ella M. Doughty*, under a shroud of fog.[28] The *Columbian* was traveling at a speed so excessive that the First Circuit Court of Appeals dubbed it "without due regard for human life."[29] The *Doughty*'s alleged negligence was in the use of improper fog signals.[30] Finding the *Columbian* "guilty . . . of a flagrant error,"[31] the appellate court held it responsible for all the damages.[32] In doing so, it overturned the lower court's decision finding both vessels at fault, instead restricting liability to the vessel whose negligence was extreme.[33]

Villain & Fassio involved a collision between a tanker, *The E.W. Sinclair*, and an anchored motor vessel, *The Angela Fassio*.[34] The *Sinclair* was negligent in failing to navigate with caution and in traveling at an excessive speed.[35] As in the *Columbian*, the *Sinclair*'s owners asserted that the *Angela Fassio* should share liability because the *Angela Fassio* sounded an arguably inappropriate signal as the *Sinclair*

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23. The Oregon, 158 U.S. 186, 197 (1895).

24. *The Umbria*, 166 U.S. at 409. This restructuring was done by Justice Addison Brown, who created the rule in its original form in *The City of New York*. 147 U.S. at 85.

25. *The Umbria*, 166 U.S. at 409.

26. 100 F. 991, 997 (1st Cir. 1900).

27. 207 F. Supp. 700, 712 (S.D.N.Y. 1962), *aff'd per curiam*, 313 F.2d 722 (2d Cir. 1963).

28. 100 F. at 992.

29. *Id.*

30. *Id.* at 995.

31. *Id.* at 997.

32. *Id.* at 998.

33. *Id.*

34. Villain & Fassio E Compagnia v. T/S E.W. Sinclair, 207 F. Supp. 700, 702–03 (S.D.N.Y. 1962), *aff'd per curiam*, 313 F.2d 722 (2d Cir. 1963).

35. *Id.* at 710.

approached.[36] The court rejected this argument, stating "[t]he gross faults of the *Sinclair* so flagrantly and heavily outweigh any passive fault on the part of the *Fassio* that in this case it is particularly apt to say that the interests of justice are best served by condemning the more culpable vessel completely."[37]

C. Discontent with the Divided Damages Rule

As comparative negligence principles became popular in other realms of American jurisprudence, commentators increasingly criticized admiralty's divided damages rule.[38] Courts also viewed the rule as unjust and applied it begrudgingly.[39] One of its harshest criticisms came from Judge Learned Hand: "An equal division [of damages] in the case would be plainly unjust; they ought to be divided in some proportion as five-to-one. And so they could be but for our obstinate cleaving to the ancient rule which has been abrogated by nearly all civilized nations."[40]

Before comparative fault became popular in other American courts, complaints about the divided damages rule were uncommon.[41] Prior to the advent of comparative fault, the affirmative defense of contributory fault precluded recovery where a plaintiff was partly at fault for his or her injury.[42] Under the contributory fault rule, recovery was precluded regardless of how slight the plaintiff's fault.[43] Contributory fault flourished in American courts around the turn of the century, but subsequently fell into disfavor as overly harsh.[44] The divided damages

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36. *Id.*

37. *Id.* at 712 (internal quotations omitted).

38. *See* Grant Gilmore & Charles L. Black, Jr., *The Law of Admiralty* 531 (2d ed. 1975); Jack L. Allbritton, *Division of Damages in Admiralty—A Rising Tide of Confusion*, 2 J. Mar. L. & Com. 323 (1971); Theodore K. Jackson, *The Archaic Rule of Dividing Damages in Marine Collisions*, 19 Ala. L. Rev. 263 (1967); Graydon S. Staring, *Contribution and Division of Damages in Admiralty and Maritime Cases*, 45 Cal. L. Rev. 304 (1957).

39. *See, e.g.*, Reliable Transfer Co. v. United States, 497 F.2d 1036, 1038 (2d Cir. 1974), *rev'd*, 421 U.S. 397 (1975); Tank Barge Hygrade v. The Gatco New Jersey, 250 F.2d 485, 488 (3d Cir. 1957); Ahlgren v. Red Star Towing & Transp. Co., 214 F.2d 618, 620–21 (2d Cir. 1954).

40. National Bulk Carriers v. United States, 183 F.2d 405, 410 (2d Cir. 1950) (Hand, J., dissenting).

41. The doctrine of contributory fault was never adopted in admiralty collision cases. Pope & Talbot, Inc. v. Hawn, 346 U.S. 406, 408–09 (1953).

42. W. Page Keeton et al., *Prosser and Keeton on the Law of Torts* § 67, at 469 (5th ed. 1984).

43. *Id.*

44. Steven Gardner, *Contributory Negligence, Comparative Negligence, and Stare Decisis in North Carolina*, 18 Campbell L. Rev. 1, 25–29, 71–72 (1996).

rule allowed at least partial recovery to a faulty plaintiff, whereas contributory fault did not. In comparison, the divided damages rule seemed much more equitable. However, as state courts replaced strict contributory negligence rules with comparative negligence, the divided damages rule began to stand out as a relic of a less enlightened era.

Critics also cited the desire for uniformity within admiralty as a reason for abolishing the divided damages rule.[45] Comparative negligence had governed in admiralty personal injury cases since 1890.[46] This general maritime law rule was reinforced by the Jones Act, which governs seamen's negligence suits against their employers,[47] and the Death on the High Seas Act, which provides for wrongful death suits for deaths occurring at sea.[48]

The need for worldwide uniformity in admiralty collision law provided another source of complaints.[49] Worldwide uniformity has long been a goal of American admiralty collision law because of the high number of cases involving parties from two or more nations.[50] Proportionate fault had been adopted in 1910 by parties to the Brussels Maritime Convention,[51] and the vast majority of seafaring and

45. *See, e.g.*, Allbritton, *supra* note 38, at 346; Staring, *supra* note 38, at 340–41, 343–44.

46. The Max Morris v. Curry, 137 U.S. 1, 14–15 (1890).

47. Jones Act, ch. 250, 41 Stat. 998 (1920) (codified as amended at 46 U.S.C. app. § 688 (1994)). The Jones Act incorporates the provisions of the Federal Employers' Liability Act (FELA), which governs federal railroad workers. *See* 45 U.S.C. §§ 51–60 (1994). The comparative negligence provision can be found in the FELA at 45 U.S.C. § 53.

48. Death on the High Seas Act, ch. 111, § 6, 41 Stat. 537 (1920) (codified as amended at 46 U.S.C. app. § 766 (1994)).

49. David R. Owen and M. Hamilton Whitman, Jr., *Fifteen Years Under* Reliable Transfer: *1975–1990 Developments in American Maritime Law in Light of the Rule of Comparative Fault*, 22 J. Mar. L. & Com. 445, 446 (1991).

50. *See, e.g.*, The Scotia, 81 U.S (14 Wall.) 170, 187 (1871) ("Undoubtedly, no single nation can change the law of the sea. That law is of universal obligation, and no statute of one or two nations can create obligations for the world."); *see also* Lauritzen v. Larsen, 345 U.S. 571, 581–82 (1953) ("[C]ourts of this and other commercial nations have generally deferred to a non-national or international maritime law of impressive maturity and universality."); De Lovio v. Boit, 7 F. Cas. 418 (D. Mass. 1815) (No. 3,776). In *De Lovio*, Justice Story sets forth a long discussion of the ancient origins of maritime law, characterizes it as international rather than the law of any one nation, and relies on laws from several nations in determining the appropriate jurisdictional test for contract cases.

51. International Convention for the Unification of Certain Rules With Respect to Collision Between Vessels, Sept. 23, 1910, art. 4, in 6 *Benedict on Admiralty*, at 3-11 (7th rev. ed. 1993) [hereinafter *Brussels Convention*]. The United States is not a party to this Convention.

commercial nations subsequently adopted proportionate fault.[52] Thus, the United States's adherence to the divided damages rule was clearly inconsistent with the laws of other seafaring nations and promoted worldwide forum-shopping.[53]

D. Reliable Transfer: *The Abolition of Divided Damages*

The U.S. Supreme Court finally responded to these criticisms in 1975 by sinking the divided damages rule in *United States v. Reliable Transfer Co.*[54] In *Reliable Transfer*, the trial court begrudgingly divided the damages equally.[55] The appellate court upheld the decision,[56] and the Supreme Court granted review on the "single question whether the admiralty rule of equally divided damages should be replaced by the rule of damages in proportion to fault."[57] It concluded that it should.[58]

Reliable Transfer concerned the stranding of *The Mary A. Whalen*, a coastal tanker, outside New York Harbor.[59] Reliable Transfer Co., the *Whalen*'s owners, sued the United States, alleging that the Coast Guard was negligent in failing to maintain a breakwater light.[60] The *Whalen* was proceeding through a narrow inlet bounded by a breakwater on one side and Coney Island on the other.[61] The light normally marked the breakwater, but the light was not operating on the night of the stranding.[62] Believing the vessel had already passed the breakwater, the *Whalen*'s captain turned the vessel towards it.[63] Despite the abundance of navigational equipment available on the *Whalen*, the captain used only his own "guesswork" in making this fateful decision. Within a few

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52. John F. Meadows & George J. Markulis, *Apportioning Fault in Collision Cases*, 1 U.S.F. Mar. L.J. 1, 24 (1989); David R. Owen, *The Origins and Development of Marine Collision Law*, 51 Tul. L. Rev. 759, 795–98 (1977).

53. United States v. Reliable Transfer Co., 421 U.S. 397, 403–04 (1975).

54. *Id.* at 411.

55. Reliable Transfer Co. v. United States, 1972 A.M.C. 1757, 1764–66 (E.D.N.Y. 1972), *aff'd*, 497 F.2d 1036 (2d Cir. 1974), *rev'd*, 421 U.S. 397 (1975).

56. *Reliable Transfer*, 497 F.2d at 1038.

57. *Reliable Transfer*, 421 U.S. at 401 n.2.

58. *Id.* at 410–11.

59. *Id.* at 398.

60. *Id.* at 399. The Supreme Court adopted the district court's account of the facts.

61. *Id.* at 398.

62. *Id.*

63. *Id.* at 398–99.

minutes, the *Whalen* was stranded.[64] Calling the *Whalen*'s error "egregious," the district court found that the stranding was caused seventy-five percent by the *Whalen*'s negligent navigation and twenty-five percent by the Coast Guard's failure to maintain the light.[65] Following the divided damages rule, the district court divided the damages equally despite its seventy-five/twenty-five percent fault allocation.[66]

In overruling the divided damages rule, the unanimous Supreme Court spared no harsh words. The Court opined that in almost every case, the divided damages rule "produce[d] palpably unfair results."[67] The Court acknowledged the numerous criticisms of the rule,[68] and agreed that it was "crude," "inequitable," and "archaic."[69]

The major-minor fault rule went down with the divided damages rule. The *Reliable Transfer* Court characterized the major-minor fault rule as an "escape valve" to the divided damages rule.[70] The major-minor fault rule, "in addition to being inherently unreliable, simply replaces one unfairness with another."[71] The Court further explained that the mere fact that "a vessel is primarily negligent does not justify its shouldering all responsibility, nor excuse the slightly negligent vessel from bearing any liability at all."[72] The two courts of appeals that have addressed the major-minor fault rule since *Reliable Transfer* have interpreted this language as abolishing it.[73] Under any interpretation, the Court undeniably disapproved of it.

E. Comparative Fault

The replacement for the divided damages rule was pure comparative fault.[74] The *Reliable Transfer* Court noted the justifications for

64. *Id.* at 399.

65. *Id.*

66. *Id.* at 399–400.

67. *Id.* at 405.

68. *Id.*

69. *Id.* at 407.

70. *Id.* at 406.

71. *Id.*

72. *Id.*

73. Western Pac. Fisheries, Inc. v. SS President Grant, 730 F.2d 1280, 1287 (9th Cir. 1984); Getty Oil Co. v. SS Ponce De Leon, 555 F.2d 328, 333 (2d Cir. 1977).

74. *See infra* notes 77–80 and accompanying text.

proportionate fault, citing the viability of comparative fault in maritime personal injury cases and foreign collision cases.[75] In adopting comparative fault, the Court stated: "We hold that when two or more parties have contributed by their fault to cause property damage in a maritime collision or stranding, liability for such damages is to be allocated among the parties proportionately to the comparative degree of their fault . . . ."[76] The lower court thus adopted comparative fault for admiralty collision cases, eliminating the antiquated divided damages rule and bringing American courts in line with other seafaring nations.

Comparative fault exists in two basic forms: pure and modified.[77] The *Reliable Transfer* Court adopted pure comparative fault, which is most easily explained by contrasting it with modified comparative fault. Pure comparative fault requires the allocation of damages among all parties whose fault contributed to the damages in proportion to their comparative fault.[78] This is true regardless of the magnitude of each party's fault.[79] Thus, in theory, one party could be found one percent at fault, with ninety-nine percent of the fault attributable to another party. The court would divide damages accordingly, with one party contributing one percent and the other paying ninety-nine percent. This absolute mandate that damages be divided is the distinguishing factor between pure and modified comparative fault. Under modified comparative fault, a plaintiff whose proportion of fault exceeds a certain percentage will not recover.[80] Most American jurisdictions have adopted

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75. *Reliable Transfer*, 421 U.S. at 407.

76. *Id.* at 411. The *Reliable Transfer* Court used the terms "comparative negligence," "comparative fault," and "proportional fault" interchangeably. This has led to great confusion and discussion among courts and commentators as to whether damages are to be allocated based on causation or degree of culpability. The language of *Reliable Transfer* lends support to both methods. This is an intriguing issue, but is beyond the scope of this Comment. The courts and commentators are solidly split. *Compare* Owen & Whitman, *supra* note 49, at 476–83 (arguing that causation is appropriate method), *with* Meadows & Markulis, *supra* note 52, at 39–41 (arguing that culpability is better method). The conflict between superseding cause and comparative fault exists under either method of allocation.

77. Keeton et al., *supra* note 42, § 67, at 471–74; 3 Stuart M. Speiser, et al., *The American Law of Torts* § 13.7, at 714–15 (1986).

78. Keeton et al., *supra* note 42, § 67, at 472; Speiser et al., *supra* note 77, § 13.8, at 716–18 (1986), 114 (Supp. 1998).

79. Keeton et al., *supra* note 42, § 67, at 472; Speiser et al., *supra* note 77, § 13.8, at 716–18 (1986), 114 (Supp. 1998).

80. Keeton et al., *supra* note 42, § 67, at 473; Speiser et al., *supra* note 77, §§ 13.9–.10, at 722–34 (1986), 114–15 (Supp. 1998).

modified comparative fault, cutting off the ability to recover of a plaintiff whose proportion of fault either meets or exceeds fifty percent.[81]

II. CAUSATION IN ADMIRALTY

A. Proximate Cause

The doctrine of proximate cause is one of several legal tools that courts use to limit the liability of a negligent actor.[82] Although labeled a causation requirement, proximate cause reflects strong considerations of social policy.[83] Whether phrased in terms of causation, limited duty,[84] or limitations on damages,[85] the analysis serves the same purpose: to provide a rational basis for limiting liability without seriously undermining tort law's goals of compensating the victim, forcing the tortfeasor to internalize costs, and optimizing accident avoidance.[86] This challenging purpose has made proximate cause a somewhat nebulous concept,[87] and judges have become astute at phrasing policy judgments in terms of causation.[88] In doing so, they have broken the proximate cause requirement into two general elements: cause-in-fact and legal cause.[89]

A negligent act or omission is a cause-in-fact in two situations. First, if the harm would not have occurred but for the act, the act was a cause-in-fact.[90] Second, where two negligent acts, each alone sufficient to cause

81. Keeton et al., *supra* note 42, § 67, at 473; Speiser et al., *supra* note 77, §§ 13.9–.10, at 722–34 (1986), 114–15 (Supp. 1998).

82. Keeton et al., *supra* note 42, § 41, at 264; Speiser et al., *supra* note 77, § 11.1, at 383–84 (1986).

83. Keeton et al., *supra* note 42, § 41, at 264; Speiser et al., *supra* note 77, § 11.1, at 380 (1986).

84. *See, e.g.*, H.R. Moch Co. v. Rensselaer Water Co., 159 N.E. 896, 898–99 (N.Y. 1928) (using analysis similar to privity to limit duty owed to one class of plaintiffs).

85. *See, e.g.*, Robins Dry Dock & Repair Co. v. Flint, 275 U.S. 303, 309 (1927) (disallowing compensation for purely economic loss unaccompanied by bodily injury or property damage and proclaiming that "[t]he law does not extend its protection so far").

86. Keeton et al., *supra* note 42, § 41, at 264; Speiser et al., *supra* note 77, § 11.1, at 378–80 (1986).

87. Keeton et al., *supra* note 42, § 41, at 263–64; Speiser et al., *supra* note 77, § 11.1, at 378–79 (1986).

88. Keeton et al., *supra* note 42, § 41, at 264.

89. *Id.* at 264, 272–73. Courts and commentators frequently use the term "proximate cause" to denote only what this Comment terms "legal cause."

90. *Id.* at 266; Speiser et al., *supra* note 77, § 11.2, at 387 (1986), 72–73 (Supp. 1998).

the harm, concurrently cause the resulting harm, each will be considered a cause-in-fact.[91]

A cause-in-fact is not a proximate cause unless it is also a legal cause.[92] Courts generally determine legal cause by using the concepts of remoteness and foreseeability.[93] The determination necessarily involves policy judgments regarding the extent to which a court will hold a tortfeasor liable for all consequences logically traceable to the tortious conduct.[94] Admiralty courts have used these concepts in evaluating causation for over 100 years,[95] and continue to do so today.[96] Negligent actors are responsible for all the "natural" and "probable" consequences of their actions.[97] A court will rule out liability for remote or unforeseeable results.[98]

B. Superseding Cause

Superseding cause is a proximate cause doctrine implicated where two or more faults, each a cause-in-fact, combine to cause injury.[99] Courts use the doctrine to cut off the liability of the first negligent actor, placing sole responsibility on a subsequent negligent actor.[100] An intervening

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91. Keeton et al., *supra* note 42, § 41, at 266–67; Speiser et al., *supra* note 77, § 11.2, at 387 (1986), 72–73 (Supp. 1998).

92. Keeton et al., *supra* note 42, § 42, at 272–73; Speiser et al., *supra* note 77, § 11.1, at 380–83 (1986).

93. Smith v. Lampe, 64 F.2d 201, 202 (6th Cir. 1933) ("[I]njury at least in some form ought to have been foreseen in the light of the attending circumstances."); *see also* Transamerica Premier Ins. v. Ober, 107 F.3d 925, 930 (1st Cir. 1997) (requiring that harm be reasonably foreseeable).

94. Keeton et al., *supra* note 42, § 41, at 264; Speiser et al., *supra* note 77, § 11.1, at 380 (1986).

95. *See, e.g.*, McCaffrey v. The Clara, 55 F. 1021 (2d Cir. 1893).

96. *See, e.g., Transamerica Premier*, 107 F.3d at 930; Horn v. B.A.S.S., 92 F.3d 609, 612 (8th Cir. 1996).

97. The Joseph B. Thomas, 86 F. 658, 665 (9th Cir. 1898).

98. *Id.*

99. *Restatement (Second) of Torts* §§ 440–42, at 465–68 (1965); Keeton et al., *supra* note 42, § 44, at 301–02; Speiser et al., *supra* note 77, § 11.9, at 413–20 (1986). Two or more causes-in-fact that combine to cause an injury are termed "concurrent causes." Keeton, et al., *supra* note 42, § 44, at 302 n.6.

100. Courts and commentators have used a variety of terms to describe what is termed here as "superseding cause." *See, e.g.*, Jones v. Director, Office of Workers' Compensation Programs, 977 F.2d 1106, 1114 (7th Cir. 1992) ("supervening cause"); Hercules, Inc. v. Stevens Shipping Co., 765 F.2d 1069, 1075 (11th Cir. 1985) ("intervening negligence"); Bludworth Shipyard, Inc. v. Lira, 700 F.2d 1046, 1051 (5th Cir. 1983) ("intervening cause"). The terms used in this Comment appear to be the most common and accurate descriptors. The *Restatement* also consistently uses "superseding cause" as used here. *Restatement, supra* note 99, §§ 440–42, at 465–68.

cause is any causal act that occurs after the original actor's negligent act.[101] An intervening act is not necessarily superseding; frequently, courts will hold both actors liable for the resultant harm.[102] The intervening act supersedes the first actor's liability only if the court determines that the second act broke the causal connection between the first action and the result.[103] Generally, the more unusual or outlandish the later act, the more likely the court will deem it superseding.[104]

Consider the following example. Vessel *A* negligently collides with Vessel *B*, causing her to sink.[105] Vessel *B* negligently fails to mark the wreck. Vessel *C* allides with the wreck of Vessel *B* and is damaged. The owner of Vessel *C* sues both Vessel *A* and the owner of Vessel *B*.[106] In this example, the negligent (in)actions of both Vessel *A* and Vessel *B* are causes-in-fact of the damage to Vessel *C*. Vessel *B*'s negligent act followed Vessel *A*'s negligent act, and is thus an intervening cause of the damage to Vessel *C*. If the court considers Vessel *B*'s negligent act to be particularly extreme or unusual,[107] Vessel *B*'s act is a superseding cause of the damage to Vessel *C*. Vessel *A*'s act would therefore not be a proximate cause of Vessel *C*'s damages, and neither Vessel *A* nor her owner is liable for the damage to Vessel *C*.[108]

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101. *Restatement*, *supra* note 99, § 441, at 465–67; Keeton et al., *supra* note 42, § 44, at 301; Speiser et al., *supra* note 77, § 11.9, at 413, 417 (1986). Prosser and Keeton do not use the same terminology as the *Restatement*. What is labeled "superseding cause" in the *Restatement* and in this Comment is frequently, although not always, termed "intervening cause" by Prosser and Keeton. Prosser and Keeton acknowledge the existence of several terms, but do not specifically adopt any. Beyond the difference in terminology, Prosser and Keeton's hornbook explains the doctrine in accord with the explanation given here and is a helpful reference.

102. *See, e.g.*, examples listed in Keeton et al., *supra* note 42, § 44, at 303–04.

103. *Restatement*, *supra* note 99, § 440, at 465; Keeton et al., *supra* note 42, § 44, at 301–03; Speiser et al., *supra* note 77, § 11.9, at 416 (1986). The various methods for determining when a cause is superseding are analyzed below. *See infra* notes 109–15 and accompanying text.

104. *See infra* note 115 (listing factors for determining when cause is superseding); *see also* Keeton et al., *supra* note 42, § 44, at 301–19 (discussing factors and giving examples); Speiser et al., *supra* note 77, § 11.9, at 420 n.73 (1986) (listing *Restatement* factors).

105. In admiralty, a crew's negligent actions are attributed to the vessel in an in rem action. *See* Canadian Aviator v. United States, 324 U.S. 215, 224 (1945) and cites therein.

106. Note that Vessel *C*'s owner has the option of proceeding in personam against the negligent individuals or in rem against the vessels themselves. Fed. R. Civ. P. Supp. Rule C. This example is primarily worded as if in rem actions were brought, except that it seems inappropriate to bring an in rem action against sunken Vessel *B*, whose value may be quite minimal.

107. Again, this depends on which of the many methods the court is using to determine whether a cause is superseding.

108. For the result in this example, see *Red Star Towing & Transportation Co. v. Woodburn*, 18 F.2d 77, 78–79 (2d Cir. 1927) (holding that failure to mark wreck was superseding cause). *But see*

In the early days of the superseding cause doctrine, admiralty courts primarily used a foreseeability test to determine whether an intervening cause superseded the original actor's liability.[109] In *Cleary Brothers v. Port Reading Railroad*, a string of barges drifted from their moorings, were captured, and then set adrift again by the independent act of a third party.[110] The Second Circuit held that the original negligent actor should not be liable unless the third party's conduct was foreseeable.[111] The Second Circuit further developed the foreseeability test in *Standard Oil Co. v. Glendola Steamship Corp.*, explaining that it was the "probability of the occurrence of the wrong which count[ed], not the fact that it [was] a wrong."[112]

Later cases expanded on the foreseeability test, citing other reasons for deeming an intervening cause "superseding." Courts have held that, regardless of foreseeability, an intervening cause will not cut off the first wrongdoer's liability if the resultant risk of harm was similar to that created by the first wrongful act.[113] Courts have also refused to hold the first actor liable where the second actor was extremely negligent.[114]

In tort law, including land-based torts, courts have considered numerous factors in determining whether a second-in-time cause-in-fact was superseding. In addition to those recognized above, the *Restatement of Torts* lists the following factors as worthy indicators: whether the second act appears, in hindsight, to be "extraordinary;" whether it "operated independently" of the original actor's negligence; and whether the subsequent actor's negligence harmed the original actor.[115]

Nunley v. M/V Dauntless Colocotronis, 727 F.2d 455, 464 (5th Cir. 1984) (en banc) (holding that failure to mark wreck was not superseding cause).

109. *See, e.g.*, Cleary Bros. v. Port Reading R.R., 29 F.2d 495, 498 (2d Cir. 1928).

110. *Id.* at 496.

111. *Id.* at 498.

112. 47 F.2d 206, 208 (2d Cir. 1931).

113. Watz v. Zapata Off-Shore Co., 431 F.2d 100, 116 (5th Cir. 1970).

114. Hansen v. E.I. Du Pont de Nemours & Co., 33 F.2d 94, 97 (2d Cir. 1929) (referring to intervening negligence as "incredible" and "extravagant").

115. The six-factor list, in its entirety, includes:

(a) the fact that its intervention brings about harm different in kind from that which would otherwise have resulted from the actor's negligence;

(b) the fact that its operation or the consequences thereof appear after the event to be extraordinary rather than normal in view of the circumstances existing at the time of its operation;

C. *Superseding Cause After* Reliable Transfer

Lower courts disagreed about the superseding cause doctrine's viability in the wake of *Reliable Transfer*. The Eleventh Circuit concluded that the doctrine's tenure had ended with the divided damages rule,[116] while the Eighth Circuit held that it had survived.[117] The Fifth Circuit apparently agreed with the Eighth Circuit, using the superseding cause doctrine without discussing its compatibility with *Reliable Transfer*.[118] In *Exxon Co. v. Sofec, Inc.*, the Ninth Circuit joined the Fifth and Eighth Circuits in applying the superseding cause doctrine despite the comparative fault rule.[119]

Courts and critics who argued that the doctrine was no longer viable after *Reliable Transfer* cited two reasons. First, some concluded that superseding cause was an ameliorative doctrine to lessen the harsh results of the divided damages rule and,[120] thus, was no longer necessary.[121] Second, they reasoned that the superseding cause doctrine conflicted with the comparative fault doctrine.[122] While comparative fault

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(c) the fact that the intervening force is operating independently of any situation created by the actor's negligence, or, on the other hand, is or is not a normal result of such a situation;

(d) the fact that the operation of the intervening force is due to a third person's act or to his failure to act;

(e) the fact that the intervening force is due to an act of a third person which is wrongful toward the other and as such subjects the third person to liability to him;

(f) the degree of culpability of a wrongful act of a third person which sets the intervening force in motion.

Restatement, *supra* note 99, § 442, at 467–68; *see also* Keeton et al., *supra* note 42, § 44, at 301–19 (presenting numerous reasons courts have deemed causes superseding, including those listed in *Restatement*); Speiser et al., *supra* note 77, § 11.9, at 420 n.73 (1986) (listing *Restatement* factors).

116. Hercules, Inc. v. Stevens Shipping Co., 765 F.2d 1069, 1075 (11th Cir. 1985).

117. Lone Star Indus., Inc. v. Mays Towing Co., 927 F.2d 1453, 1459 (8th Cir. 1991).

118. Nunley v. M/V Dauntless Colocotronis, 727 F.2d 455, 463–66 (5th Cir. 1984).

119. 54 F.3d 570, 573–76 (9th Cir. 1995).

120. *See, e.g.*, *Hercules*, 765 F.2d at 1075; Terry Christlieb, Note, *Why Superseding Cause Analysis Should Be Abandoned*, 72 Tex. L. Rev. 161, 169–70 (1993). The major-minor fault rule is an example of an ameliorative doctrine. *See supra* Part I.B.

121. *Hercules*, 765 F.2d at 1075 ("Under a 'proportional fault' system, no justification exists for applying the doctrines of intervening negligence and last clear chance.").

122. *See, e.g.*, Owen & Whitman, *supra* note 49, at 462 ("[T]he concept of [superseding] cause remains contrary to the proportionate fault approach mandated in *Reliable Transfer*."); Christlieb, *supra* note 120, at 181 ("It is logically inconsistent to simultaneously hold that all negligent parties should pay in proportion to their fault, and that one negligent party does not have to pay its share.").

requires the division of damages among all parties whose negligence caused the harm,[123] the superseding cause doctrine eliminated one or more causes-in-fact from the allocation.[124] Thus, some concluded, the doctrines were irreconcilable.[125]

Those maintaining that superseding cause survived simply did not see a conflict.[126] The Eighth Circuit rejected the conclusion of the Eleventh Circuit, stating:

> To the extent that *Hercules* [the Eleventh Circuit ruling] holds that liability for negligence which is a cause in fact of injury—no matter how remote—cannot be cut off, we squarely reject it as not compelled by *Reliable Transfer*. Rather, we see no inconsistency between comparative fault and superseding cause.[127]

Fault, the court reasoned, was only to be allocated among parties whose negligence proximately caused the harm.[128] Hence, not every act that was a cause-in-fact had to be included in the allocation.

D. Exxon Co. v. Sofec, Inc.: *The Affirmation of Superseding Cause*

The Supreme Court resolved the circuit split when it affirmed the Ninth Circuit's decision in *Exxon Co. v. Sofec, Inc.* that superseding cause survived the adoption of pure comparative fault.[129] The case arose from the stranding of an oil tanker, *The Exxon Houston*, several hours after it broke away from a mooring system owned and operated or manufactured by the various respondents.[130] Exxon brought negligence, products liability, and breach of warranty claims against the respondents, alleging that they were responsible for the breakout.[131]

When the *Houston* broke away from the mooring system, part of a hose used for delivering oil from the tanker to the system remained

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123. *See supra* Part I.E.

124. *See supra* Part II.B.

125. *See supra* notes 116, 120–22.

126. *See, e.g.*, Exxon Co. v. Sofec, Inc., 54 F.3d 570, 574–75 (9th Cir. 1995), *aff'd*, 517 U.S. 830 (1996); Lone Star Indus. v. Mays Towing Co., 927 F.2d 1453, 1458–59 (8th Cir. 1991).

127. *Lone Star Indus.*, 927 F.2d at 1459.

128. *Id.*

129. 517 U.S. at 836–39.

130. *Id.* at 832. Some of the defendants owned and/or operated the mooring system, while another had manufactured it. Third party claims were also brought against manufacturers and suppliers of the chain that held the tanker to the mooring system. *Id.* at 834.

131. *Id.*

attached to the vessel, threatening the *Houston*'s maneuverability.[132] Roughly one half hour after the breakout, an assist vessel gained control of the hose, eliminating the threat.[133] The *Houston* then turned away from the shallow water and headed back out to sea.[134] Her captain's series of "extraordinarily" negligent actions then began.[135] Most significantly, the captain failed to plot the tanker's position, preventing him from effectively navigating.[136] Due to his subsequent navigational errors, the *Houston*'s crew turned her back toward shore and eventually stranded her.[137]

The district court found that the *Houston*'s "extraordinary negligence" superseded any fault of the parties responsible for the breakout,[138] and the Ninth Circuit affirmed.[139] Exxon appealed to the Supreme Court, arguing that the concepts of proximate cause and superseding cause should not be used in a pure comparative fault system.[140]

The Supreme Court firmly rejected Exxon's arguments, holding that proximate cause analysis was required and that superseding cause analysis could be used within a comparative fault system.[141] The Court explained that fault was to be apportioned only among parties whose fault proximately caused the harm and that superseding cause was a viable way of determining whether a cause-in-fact was a proximate cause.[142]

In determining that the *Houston*'s negligence superseded any fault of the prior actors, the Supreme Court, Ninth Circuit, and district courts all placed great weight on the egregiousness of her captain's errors. Although foreseeability is mentioned in the circuit and Supreme Court decisions,[143] they apparently determined that the *Houston*'s acts were superseding because they were extremely negligent, repeatedly labeling

132. *Id.* at 833.

133. *Id.*

134. *Id.*

135. *Id.* at 833–34.

136. *Id.*

137. *Id.* at 834.

138. *Id.* at 835.

139. *Id.*

140. *Id.* at 836.

141. *Id.* at 836–38, 842.

142. *Id.* at 837–38.

143. *Id.* (quoting 1 T. Schoenbaum, *Admiralty and Maritime Law* § 5-3, at 165–66 (2d ed. 1994)); Exxon Co. v. Sofec, Inc., 54 F.3d 570, 578 (9th Cir. 1995), *aff'd*, 517 U.S. 830.

the conduct of the *Houston*'s crew as "extraordinarily negligent."[144] In explaining the doctrine, the Ninth Circuit held that an intervening cause may cut off a prior actor's liability where it "is the result of extraordinary negligence."[145]

E. Superseding Cause After Sofec

Only one reported admiralty case since *Sofec* includes a substantial superseding cause analysis.[146] In *Crounse Corp. v. Vulcan Materials Co.*,[147] the third-party defendant urged the court to find that a second wrongdoer's act superseded the first actor's negligence.[148] The court undertook an extensive discussion of superseding cause, citing all the indicative factors laid out in the *Restatement*.[149] The court ultimately found that the second act was foreseeable and, therefore, not superseding.[150]

The Ninth Circuit rejected a defendant's superseding cause argument in an unpublished case, *Fox v. United States*.[151] In *Fox*, one defendant sought indemnification from another, claiming that the second defendant's act superseded his negligent omission.[152] The court rejected his argument, stating that the second defendant's "negligence was not so extraordinary as to extinguish [the first defendant's] own liability."[153] The court distinguished the second defendant's conduct from that of the

144. *Sofec*, 517 U.S. at 834–36, 840.

145. *Sofec*, 54 F.3d at 575.

146. Other admiralty cases have mentioned superseding cause, but have not discussed it. In *H.R.M., Inc. v. S/V Venture VII*, the court found a subsequent act superseding, but did not explain its reasoning. 972 F. Supp. 92, 99–100 (D.R.I. 1997). In a Ninth Circuit case, *Sementilli v. Trinidad Corp.*, the majority opinion does not mention superseding cause, but is discussed in the special concurrence. No. 96-16034, 1998 WL 784675 (9th Cir. Sept. 16, 1998, amended Nov. 12, 1998). Judge Nelson's concurrence indicates that an actor is not liable when the "injury is brought about by a later cause of independent origin over which the defendant has no control or responsibility." *Id.* at *12 (Nelson, J., concurring). Judge Nelson concluded that general sea conditions and an upside-down rug are "insufficient intervening causes to relieve [the defendant] of liability" in a slip and fall case. *Id.* at *12–13 (Nelson, J., concurring).

147. 956 F. Supp. 1392 (W.D. Tenn. 1996).

148. *Id.* at 1395.

149. *Id.* at 1395–1401.

150. *Id.* at 1399–1400; *see Restatement* factors, *supra* note 115.

151. No. 97-15417, 1998 WL 482959, at *3 (9th Cir. Aug. 12, 1998).

152. *Id.* at *2.

153. *Id.* at *3.

second actors in *Sofec* and *Hunley v. Ace Maritime Corp.*[154] In both *Sofec* and *Hunley*, the second actor's conduct was grossly negligent.[155]

A Fifth Circuit court also addressed superseding cause after *Sofec* in another unpublished decision, *Tidewater Marine, Inc. v. Sanco International, Inc.*[156] One defendant moved for summary judgment, arguing that the action of the plaintiff and another defendant were superseding causes.[157] The court denied the motion but upheld the validity of the argument.[158] The court set forth three ways in which it could find an intervening cause to be superseding. First, if the initial actor should have realized the second actor might act as he did, the first actor will be held liable.[159] Second, if a reasonable person under similar circumstances would not have considered the intervening action extraordinary, the first actor's liability will not be cut off. Lastly, the first actor will be held liable where "the intervening act is a normal consequence of a situation created by the actor's conduct and the manner in which it is done is not extraordinarily negligent."[160]

III. THE *SOFEC* SUPERSEDING CAUSE ANALYSIS CONFLICTS WITH PURE COMPARATIVE FAULT

Sofec fell far short of helping the doctrine of proximate cause become a viable and understandable method of limiting liability without undermining the goals of tort law. Instead, the *Sofec* Court endorsed a rule that is irreconcilable with pure comparative fault and endorsed the useless and confusing doctrine of superseding cause. The *Sofec* Court correctly concluded that the doctrines of proximate cause and superseding cause do not inherently conflict with comparative fault. However, superseding cause as used by the Court does conflict with pure comparative fault.

The various methods for determining whether a cause is superseding can be separated into two classes: those based on culpability and those

154. *Id.*; Hunley v. Ace Maritime Corp., 927 F.2d 493, 495 (9th Cir. 1991).

155. Exxon Co. v. Sofec, Inc., 54 F.3d 570, 578–79 (9th Cir. 1995), *aff'd*, 517 U.S. 830 (1996); *Hunley*, 927 F.2d at 497.

156. No. CIV.A.96-1258, 1997 WL 543108 (E.D. La. Sept. 3, 1997).

157. *Id.* at *4.

158. *Id.* at *6–7.

159. *Id.* at *6 (citing Donaghey v. Ocean Drilling & Exploration Co., 974 F.2d 646, 652 (5th Cir. 1992)).

160. *Id.*

based on foreseeability or remoteness.[161] Those based on foreseeability or remoteness do not conflict with comparative fault, but add nothing to the doctrine of proximate cause. More significantly, however, those based on culpability are irreconcilable with admiralty's pure comparative fault, and their use marks a return to the long-abandoned major-minor fault rule, which produced patently unfair results.[162] Hence, courts should abolish the doctrine of superseding cause in admiralty.[163]

A. Proximate Cause Does Not Inherently Conflict with Comparative Fault

The doctrine of proximate cause does not conflict with comparative fault. Proximate cause, although a somewhat confusing concept, is an essential element of a negligence cause of action. With the exception of those who advocate the absorption of proximate cause concepts into the element of duty,[164] no one has seriously advocated the elimination of proximate cause.[165] At some point, the causal link between an action and its consequences becomes too remote to consider imposing liability.[166] Under comparative fault, courts apportion damages only among those parties whose negligence proximately caused the harm.[167] The plaintiff

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161. See Christlieb, *supra* note 120, at 163–67, for similar classifications. His "absorbing cause" category is similar to the "culpability" category here; his "sole proximate cause" category is similar to the foreseeability and remoteness categories used here.

162. *See supra* notes 70–73 and accompanying text.

163. This argument is also applicable in any jurisdiction that follows pure comparative fault.

164. *See* discussion in Keeton et al., *supra* note 42, § 42, at 273–75.

165. Although Exxon's attorneys did make this argument in *Sofec*, it was in the interests of their client and cannot be considered an objective commentary on the doctrine. Petitioner's Reply Brief on the Merits at 2–3, Exxon Co. v. Sofec, Inc., 517 U.S. 830 (1996) (No. 95-129), *available in* 1996 WL 84600. Exxon argued that liability should be distributed among all causes-in-fact, and that any other distribution would be contrary to comparative fault. Thus, it urged the abandonment of proximate cause concept. This was indeed a quite novel proposition, and one that the Court was not likely to accept. Exxon may actually have hurt its case by making such a bold argument. Had it merely asked for the abandonment of superseding cause, the Court may have been more inclined to decide the case in its favor.

166. Keeton et al., *supra* note 42, § 41, at 264, 293–94, 312; Speiser et al., *supra* note 77, § 11.1, at 378 (1986). Also, the "For Want of a Nail" story adopted from James Baldwin, where a lost horseshoe nail eventually leads to the loss of an entire kingdom, demonstrates how attenuated the causal chain can become. The causal chain was as follows: "For want of a nail, a shoe was lost. For want of a shoe, a horse was lost. For want of a horse, a battle was lost. For want of a battle, a kingdom was lost. And all for the want of a horseshoe nail."

167. *See, e.g.*, Speiser et al., *supra* note 77, § 13.22, at 754 (1986); Gardner, *supra* note 44, at 2. This statement assumes, for simplicity, that negligence claims were brought against all the involved

must prove a negligence claim, including the element of proximate cause, against each defendant.[168] Only then is fault apportioned.[169] There is thus no inherent incongruity between the doctrines of proximate cause and comparative fault.

B. *The Culpability Method of Superseding Cause Analysis Conflicts with Pure Comparative Fault*

Courts use many considerations in determining whether a second-in-time cause-in-fact is superseding,[170] but those frequently used are loosely based on three concepts: foreseeability, remoteness, and culpability. The foreseeability and remoteness methods are based on traditional proximate cause notions and are consistent with comparative fault. The culpability method, however, hinges on the parties' relative degrees of blame and directly conflicts with pure comparative fault.

1. *Foreseeability Method*

If the intervening cause-in-fact was unforeseeable, courts will not hold the prior actor liable.[171] Courts have asked the foreseeability question, both in superseding cause and straightforward proximate cause analysis, in three ways: (1) whether the resultant harm was foreseeable,[172] (2) whether the manner in which the harm came about was foreseeable,[173] and (3) whether the plaintiff was foreseeable.[174] If any of these questions is answered affirmatively, the court is likely to hold the original

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parties. However, the "fault" could also be from different causes of action, for example, breach of contract or strict products liability.

168. Speiser et al., *supra* note 77, § 13.22, at 754 (1986); Gardner, *supra* note 44, at 3.

169. Speiser et al., *supra* note 77, § 13.22, at 754 (1986); Gardner, *supra* note 44, at 3.

170. *See supra* Part II.B.

171. *See supra* notes 109–12 and accompanying text.

172. *See, e.g.*, Overseas Tankship Ltd. v. Morts Dock & Eng'g Co. [*Wagon Mound I*], 1 E.R. 404, 407 (U.K. 1963) (considering foreseeability of harm rather than of person injured or of manner in which harm was inflicted).

173. *See, e.g.*, Ventricelli v. Kinney Sys. Rent A Car, 383 N.E.2d 1149, 1149–50 (N.Y. 1978) (finding no liability because manner in which plaintiff was injured was not foreseeable).

174. If no hazard was apparent to the eye of ordinary vigilance, an act innocent and harmless, at least to outward seeming, with reference to [plaintiff], did not take to itself the quality of a tort because it happened to be a wrong, although apparently not one involving the risk of bodily insecurity, with reference to some one else.

Palsgraf v. Long Island R.R. Co., 162 N.E. 99, 99 (N.Y. 1928). Note that this discussion is in the context of duty, not causation.

tortfeasor liable.[175] In addition to the straight foreseeability test, considerations of whether the resultant harm was different in kind or type fall into the foreseeability category. Most early admiralty superseding cause cases relied on foreseeability,[176] as did the post-*Sofec* case of *Crounse Corp. v. Vulcan Materials Co.*[177] This Comment refers to this type of superseding cause analysis as the foreseeability method.

2. Remoteness Method

Where the link between the first cause and the resulting harm is tenuous, courts will not hold the prior actor liable.[178] Considerations of whether the second wrongdoer acted independently are within this classification,[179] as are factors such as whether the intervening cause was precipitated by a third actor or by a natural, non-human event.[180] The consideration of these factors is based on the belief that courts should not impose liability on negligent actors for remote, unnatural, or improbable consequences of their acts.[181] This Comment refers to this type of analysis as the remoteness method.

Petitions of Kinsman Transit Co. demonstrates the use of remoteness in evaluating proximate cause.[182] In *Kinsman*, the defendants' negligence caused a bridge to collapse.[183] The collapse prevented a vessel from unloading her cargo beyond the bridge, causing the vessel's owner to suffer economic damages.[184] The court reasoned that the vessel owner's damages were not "direct or immediate."[185] It concluded that "the connection between the defendants' negligence and the claimants'

175. Keeton et al., *supra* note 42, §§ 41–42, at 263–73; Speiser et al., *supra* note 77, § 11.3, at 388–93 (1986), 73–74 (Supp. 1998).

176. *See, e.g.*, Standard Oil Co. v. Glendola S.S. Corp. [*The Glendola*], 47 F.2d 206, 208 (2d Cir. 1931), discussed *supra* in text accompanying note 112; Cleary Bros. v. Port Reading R.R., 29 F.2d 495, 498 (2d Cir. 1928).

177. 956 F. Supp. 1392, 1399 (W.D. Tenn. 1996).

178. *See, e.g.*, Skibs A/S Gylfe v. Hyman-Michaels Co., 438 F.2d 803, 808 (6th Cir. 1971) (indicating that remoteness is one basis for deeming cause superseding); *see also* De Los Santos v. Scindia Steam Navigation Co., 598 F.2d 480, 490 (9th Cir. 1979), *aff'd*, 446 U.S. 934 (1980).

179. *See, e.g.*, Donaghey v. Ocean Drilling & Exploration Co., 974 F.2d 646, 652 (5th Cir. 1992).

180. *Id.*

181. *De Los Santos*, 598 F.2d at 490; *Skibs*, 438 F.2d at 808.

182. 388 F.2d 821 (2d Cir. 1968).

183. *Id.* at 823–24.

184. *Id.*

185. *Id.* at 823.

damages is too tenuous and remote to permit recovery."[186] The remoteness method of determining superseding cause uses precisely this reasoning. If the intervening act renders the link between the first act and the harm tenuous, it will supersede the first actor's liability.

The remoteness and foreseeability categories of superseding cause analysis are based on traditional notions of proximate cause and do not conflict with comparative fault. Courts have long concluded that a negligent actor will not be held liable if the resulting harm was unforeseeable or too remote.[187] The only difference between this general proposition of proximate cause and the doctrine of superseding cause is the intervening actor. Under superseding cause analysis, it is the intervening actor whose conduct was unforeseeable or who further attenuated the causation chain.[188] The superseding cause doctrine, when using these methods of analysis, thus adds nothing to traditional notions of proximate cause.[189] Hence, it does not conflict with comparative fault.

3. *Culpability Method*

Courts adopting the culpability method of superseding cause analysis hold that if the degree of the second actor's negligence was very high, the prior actor's liability is cut off.[190] In such cases, courts frequently use such adjectives as "extreme," "extraordinary," and "gross" when describing the second actor's negligence.[191] This Comment refers to this method of analysis as the culpability method. An important distinction must be made here. In some cases, courts conclude that a second act was unforeseeable because it was extraordinarily negligent.[192] Such cases do

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186. *Id.* at 825.

187. *See supra* notes 92–98 and accompanying text.

188. *See supra* notes 109–12 and accompanying text.

189. John G. Phillips, *The Sole Proximate Cause "Defense": A Misfit in the World of Contribution and Comparative Negligence*, 22 S. Ill. U. L.J. 1, 2, 7 (1997); Christlieb, *supra* note 120, at 183.

190. *See, e.g.*, Nunley v. M/V Dauntless Colocotronis, 727 F.2d 455, 464 (5th Cir. 1984); Hansen v. E.I. Du Pont de Nemours & Co., 33 F.2d 94, 97 (2d Cir. 1929).

191. *See, e.g.*, Exxon Co. v. Sofec, Inc., 517 U.S. 830 (1996); *see also supra* notes 144–45 and accompanying text.

192. *See, e.g.*, A.H. Robbins Co. v. Dalkon Shield Claimants Trust, 219 B.R. 710, 712 (E.D. Va. 1998) ("Most states consider ordinary negligence by a healthcare provider to be reasonably foreseeable and thus, not an intervening or superseding cause. Generally, gross negligence or intentional wrongdoing by the physician is required to interrupt the causal chain."); Hickert v. Wright, 319 P.2d 152, 160 (Kan. 1957) (holding that first actors "[c]ertainly . . . could not

not belong in this category because the deciding factor is foreseeability. Under the culpability method, the second act is superseding simply because the degree of culpability was high, not because the high degree of culpability rendered it unforeseeable.[193]

There are indications that the *Sofec* Court may have reached its conclusion because the degree of the *Houston* captain's negligence made its negligent acts unforeseeable.[194] However, a complete reading of the case and the lower court decisions suggests that the Supreme Court based its decision on the fact that the *Houston*'s negligence was extreme, rather than unforeseeable.[195] At any rate, the Court apparently approved of this method, and certainly did not disapprove of it. Furthermore, lower courts have subsequently interpreted *Sofec* as upholding the culpability method.[196]

The culpability method of determining whether a cause is superseding, which was used in *Sofec*, directly conflicts with pure comparative fault. Pure comparative fault mandates that courts apportion damages among all faulty actors, no matter how great or small their degrees of culpability.[197] The culpability method of determining whether a cause is superseding exempts one or more parties from liability because another party was much more negligent. In other words, fault will not be

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reasonably have foreseen and were not bound to anticipate that [second actor] would commit an act of gross and wanton negligence").

193. It would be easy to avoid this distinction by concluding that highly culpable acts will always be unforeseeable. This is not always true. Consider this example: A taxi driver negligently leaves an expensively dressed tourist alone in an area infamous for its violent crimes. The tourist is subsequently robbed. The thief is certainly highly culpable, yet his conduct was foreseeable. *Restatement* sections 447(a) and 449 suggest that a foreseeability analysis should be used to hold the driver liable in such a situation.

194. *Sofec*, 517 U.S. at 837–38 (quoting Schoenbaum, *supra* note 143, §§ 5-3, at 165–66) (explaining superseding cause in terms of foreseeability).

195. The courts repeatedly characterized the *Houston*'s acts as "extremely," "extraordinarily," or "grossly negligent." *See supra* note 144. In explaining the district court opinion, the Supreme Court said that the *Houston*'s captain's "extraordinary negligence was the superseding and sole proximate cause of the *Houston*'s grounding." *Sofec*, 517 U.S. at 835. The Ninth Circuit said that the captain's actions "amounted to extraordinary negligence, superseding any negligence of the defendants." *Id.* These references indicate that the focus was on the culpability, rather than foreseeability, of the *Houston*'s conduct.

196. *See* Fox v. United States, No. 97-15417, 1998 WL 482959, at *3 (9th Cir. Aug. 12, 1998) (explaining that second actor's conduct was not superseding because it was not extraordinarily negligent); Tidewater Marine, Inc. v. Sanco Int'l, No. CIV.A.96-1258, 1997 WL 543108, at *6 (E.D. La. Sept. 3, 1997) (stating that one reason intervening cause may be superseding is that act was extraordinarily negligent, regardless of whether it was normal consequence of first act).

197. *See supra* notes 75–79 and accompanying text.

apportioned where there is a large disparity in degree of culpability among the parties.[198] Thus stated, the conflict between the doctrines of pure comparative fault and superseding cause as used in *Sofec* is clear: one mandates that courts do not consider the degree of culpability; one requires that they do.[199]

C. Sofec's *Adoption of the Culpability Method Revives the Major-Minor Fault Rule*

Superseding cause, as used in *Sofec*, effectively marks a return to the major-minor fault rule. The culpability method of superseding cause analysis operates to cut off the liability of a slightly negligent actor when another actor's negligence was much greater.[200] This is precisely what the major-minor fault rule did, excusing the slight fault of one party at the expense of the party whose fault was greater.[201] The *Reliable Transfer* Court unceremoniously abandoned the major-minor fault doctrine, criticizing it as inherently unfair.[202] The use of superseding cause to achieve the same result is equally unfair. In upholding the use of superseding cause to hold only the greatly negligent party liable, the *Sofec* Court approved exactly what the *Reliable Transfer* Court had rejected.

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198. It should be noted that this conflict is inherent only under pure comparative fault, and would present itself very rarely under modified comparative fault systems. The *Sofec* Court noted that at least 44 of 46 states using comparative fault continue to use superseding cause. *Sofec*, 517 U.S. at 838. As previously discussed, most states use a modified comparative fault system. This method of superseding cause analysis does not undermine modified comparative fault systems because they do not mandate apportionment regardless of the degree of culpability. Rather, fault is only apportioned where the plaintiff was, at most, 50% at fault. The conflict would only arise where the plaintiff has sued two or more defendants, and a defendant who acted after the first defendant was much more negligent than the first. This would indeed be an uncommon occurrence. Thus, while the culpability method of determining whether a cause is superseding should be abandoned altogether, the need is not as urgent in jurisdictions using modified comparative fault systems.

199. Sumpter v. City of Moulton, 519 N.W.2d 427, 432 (Iowa Ct. App. 1994) ("The principles of comparative fault could be seriously diluted by utilizing the conduct of the plaintiff as an intervening cause. The preferred approach is to judge the conduct of a plaintiff under comparative fault."); Phillips, *supra* note 189, at 15 ("[T]he sole proximate cause defense is an anachronism that cannot co-exist with modern concepts of comparative fault."); Christlieb, *supra* note 120, at 172 ("The court was correct not to invoke superseding cause in the sense of absorbing cause, for as we have seen, it is illegitimate to appeal to that doctrine after *Reliable Transfer*.").

200. *See supra* notes 190–92 and accompanying text.

201. *See supra* notes 24–25 and accompanying text.

202. *See supra* notes 70–73 and accompanying text.

The results in the major-minor fault cases, *The Columbian* and *Villain & Fassio*,[203] should have been different if the cases were decided after *Reliable Transfer*. Analyzed under *Sofec*, however, the result would be exactly as it was under the major-minor fault rule. Whether the actual outcome of those cases was unfair is debatable;[204] whether inconsistency exists between the results reached under *Reliable Transfer* and *Sofec* is not.

In both cases, one vessel negligently failed to sound appropriate fog signals.[205] In both cases, a second vessel negligently navigated directly into the first vessel.[206] Although all the vessels were negligent, the second vessels' navigation was considerably more negligent than the first vessels' failure to sound signals.[207] As such, the courts used the major-minor fault rule to hold only the second vessels liable.[208]

The Columbia and *Villain & Fassio* were typical major-minor fault cases and, as such, were impliedly criticized in *Reliable Transfer*.[209] *Reliable Transfer* sought to end the "unfair" results reached under the major-minor fault rule. After *Reliable Transfer*, the slight negligence of the first vessels would not have been excused because the rule allowing such exculpation was struck down. According to the reasoning of *Reliable Transfer*, all the vessels should have shared responsibility according to their respective negligence.[210]

Using the superseding cause analysis in *Sofec*, *The Columbian* and *Villain & Fassio* outcomes would remain the same as they were under the abrogated major-minor fault rule. Under the culpability method, a negligent act is superseding merely because it is extraordinarily negligent.[211] Both the *Columbian* and the *Villain & Fassio* were extraordinarily negligent.[212] Thus, a court using this method would excuse the negligence of the first vessels, those guilty of not sounding

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203. *See supra* Part I.B.

204. It can plausibly be argued that, in those cases, the more negligent parties should have borne the entire expense of the collisions. It can also be easily argued that each party, regardless of the magnitude of its negligence, should have paid in proportion to its contribution to the collision.

205. *See supra* notes 30 and 36.

206. *See supra* notes 28–29 and 34–35.

207. *See supra* notes 31 and 37.

208. *See supra* notes 32 and 37.

209. *See supra* notes 70–73 and accompanying text.

210. *See supra* notes 75–76 and accompanying text.

211. *See supra* notes 190–92 and accompanying text.

212. *See supra* notes 31 and 37.

proper fog signals. Using this analysis, these cases would reach the same "unfair" outcome that was reached under the major-minor fault rule.

The culpability method of evaluating superseding cause is equivalent to the major-minor fault rule. The analysis is the same; the results are the same. The Court retired the major-minor fault rule in *Reliable Transfer*, yet promulgated the culpability method of determining superseding cause in *Sofec*. These results are thus inconsistent.

D. Reliable Transfer *Probably Would Have Been Decided Differently Under* Sofec

The outcome in *Reliable Transfer* itself probably would have been different if the case had been analyzed under the superseding cause analysis as presented in *Sofec*. In *Reliable Transfer*, the Court allocated fault between two parties—twenty-five percent to the first negligent actor, the Coast Guard, and seventy-five percent to the second actor, the *Whalen*.[213] The Court would probably consider the negligence of a party that was seventy-five percent at fault to be extreme. Indeed, the Court's description of negligent navigation by the *Whalen* is very similar to its later description of the *Houston*'s navigation.[214] If deemed extremely negligent, the *Whalen*'s conduct would have superseded the Coast Guard's liability under the culpability method of analyzing superseding cause. Using this analysis, the *Whalen* would have been solely liable for the damages incurred in the stranding.

IV. THE *SOFEC* COURT COULD HAVE REACHED THE SAME RESULT WITHOUT CREATING A DOCTRINAL CONFLICT

The Court's view that Exxon should be held solely at fault for the grounding of the *Houston* is understandable. Exxon, the antithesis of the sympathetic plaintiff,[215] was attempting to use the comparative fault system to recover for an accident that was largely its fault. Exxon knew it would have to pay for most of the accident, but wanted to use the pure

213. United States v. Reliable Transfer Co., 421 U.S. 397, 399 (1975).

214. *See supra* notes 60–66 and 138–44.

215. Keep in mind that this occurred after the infamous *Exxon Valdez* grounding of March 24, 1989, in which millions of gallons of oil were spilled into an Alaskan sound and wreaked havoc on the environment. Bill McAllister, *Millions of Gallons of Oil Spill into Alaskan Sound*, Wash. Post, Mar. 25, 1989, at A1. *See generally* Art Davidson, *In the Wake of the Exxon Valdez: The Devastating Impact of the Alaska Oil Spill* (1990).

comparative fault system to make others pay for its loss.[216] Hence, it is not surprising that the Court decided to hold Exxon liable. What is surprising is the Court's chosen method of doing so.

The Court could have reached the same result in *Sofec* without creating the conflict between superseding cause and pure comparative fault. The Court could have excused the *Sofec* defendants either by traditional proximate cause analysis or by using either the remoteness or foreseeability methods of analyzing superseding cause. Alternatively, the Court could have steered clear of proximate cause entirely and limited the *Sofec* defendants' liability in terms of duty or damages. This, however, would not have been as desirable because it would not have addressed the confusion surrounding the use of superseding cause analysis.

Traditional proximate cause notions do not conflict with comparative fault.[217] The remoteness and foreseeability methods of superseding cause analysis are rooted in traditional proximate cause notions.[218] Thus, the Court could have used the traditional notions of remoteness and foreseeability in evaluating causation in *Sofec*. Whether termed proximate cause or superseding cause analysis, the considerations and results would be identical. The preferable approach would have been to use only the label of proximate cause, avoiding the term superseding cause and its accompanying confusion.

Using the concepts of remoteness and foreseeability, rather than culpability, the Court could have held Exxon solely liable. Under traditional proximate cause analysis, as long used in admiralty, courts will not hold negligent actors liable for the unforeseeable, unnatural, or improbable consequences of their acts.[219] The chain of events following the *Houston*'s "breakout" was not foreseeable, and was hardly the natural and probable consequence of the breakout. A reasonable person, at the time of the "breakout," would not have foreseen that the *Houston*'s captain would fail to determine her position, then turn directly into a

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216. Note that this is quite similar to *Reliable Transfer* where the negligent plaintiff intended to take advantage of the divided damages rule to recover from the significantly less culpable defendant. There, the Supreme Court rejected this attempt by rejecting the divided damages rule. *See supra* Part I.D.

217. *See supra* notes 165–69 and accompanying text.

218. *See supra* notes 187–89 and accompanying text.

219. *See supra* notes 92–98 and accompanying text.

known reef. Furthermore, once the hose had been contained, the *Houston* was no longer in danger until she turned towards shore.

The chain of events that led to the stranding was remote, unforeseeable, and improbable. Hence, any negligence that contributed to the "breakout" could not be considered a proximate cause of the *Houston*'s stranding. By using traditional notions of proximate cause, the Court could have held Exxon solely liable without setting forth a superseding cause doctrine that conflicts with pure comparative fault.

V. ADMIRALTY LAW SHOULD ABANDON SUPERSEDING CAUSE ANALYSIS

A. Policy Mandates the Abandonment of the Culpability Method of Superseding Cause

Courts should not allow superseding cause to undermine admiralty's pure comparative fault rule. Because pure comparative fault directly conflicts with the culpability method of superseding cause analysis, courts must eliminate one of the doctrines. The policy reasons that prompted the Court to adopt pure comparative fault in *Reliable Transfer* still hold true today: pure comparative fault is inherently fair, and it provides much needed uniformity in international admiralty law.

The pure comparative fault method of allocating damages has been recognized as "undoubtedly the fairest and most equitable system."[220] Each party pays in relation to its proportion of fault.[221] The system is designed so that each party pays no more and no less than the amount of damages for which it is responsible. This fairness should not be undermined by superseding cause, which would allow a party to escape liability merely because its fault was slight, and force another party to pay for damages beyond those for which it was to blame.

In addition to its fairness, pure comparative fault is necessary for uniformity. The following example underscores the need for an internationally uniform system for allocating damages in collision cases. Before the Brussels Convention,[222] a North Sea collision gave rise to

220. Henry Woods & Beth Deere, *Comparative Fault* § 1.11, at 22 (3d ed. 1996 & Supp. 1998); *see also* Keeton et al., *supra* note 42, § 67, at 494, 508; Gardner, *supra* note 44, at 33–34.

221. *See supra* notes 78–79 and accompanying text.

222. Recall that the *Brussels Convention* established comparative fault for most of the seafaring world. *See supra* note 51 and accompanying text.

three lawsuits; each in a different country.[223] One shipowner sued in London's admiralty court,[224] cargo owners brought suit in Antwerp's commercial court,[225] and the family of a seaman killed in the collision brought suit in the Netherlands.[226] Although each court found both vessels at fault, they apportioned damages differently.[227] The Belgian court apportioned damages according to fault.[228] The English court followed the divided damages rule, splitting damages equally.[229] The Dutch court awarded the deceased seaman's family nothing, because where both vessels were at fault the contributory negligence rule prevented either from recovering.[230] The three outcomes were completely inconsistent, and the plaintiffs' recoveries depended on the courts' choice of law rather than on the merits of their claims. The possibility of a collision involving international actors is indeed great, as is the potential for irreconcilable legal remedies.

The Brussels Convention largely resolved this inconsistency, establishing pure comparative fault as the rule in most nations.[231] The United States initially remained an anomaly—the seafaring nation providing a different system of recovery than its worldwide trading companions. With its adoption of pure comparative fault, the United States ended this incongruity.[232]

The culpability method of superseding cause analysis effectively undermines the American system of pure comparative fault, and subsequently, international uniformity. Although results overall will remain fairly consistent, courts should reject any doctrine with the potential to disrupt uniformity and promote unpredictability. The great likelihood of lawsuits between vessels from different countries underscores the need for uniform admiralty laws among seafaring nations. The United States should continue to allocate fault according to

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223. This story is told in Goschka, *supra* note 9, at 65–66, and A. Huger, *The Proportional Damage Rule in Collisions at Sea*, 13 Cornell L.Q. 531, 531 (1928).

224. Goschka, *supra* note 9, at 65.

225. *Id.* at 65–66.

226. *Id.* at 66.

227. *Id.*

228. *Id.*

229. *Id.*

230. *Id.*

231. *See supra* note 51.

232. *See supra* note 1 and accompanying text.

pure comparative fault to remain consistent with most other seafaring nations, which adopted pure comparative fault long ago.[233]

B. *Courts Should Abandon the Foreseeability and Remoteness Methods of Superseding Cause Analysis*

Although superseding cause analysis using remoteness or foreseeability as determining factors is legally sound, courts should nonetheless abandon it.[234] These two categories of superseding cause analysis add nothing to general notions of proximate cause.[235] Because their sole contribution is a bevy of confusing terminology, the removal of these terms would simplify proximate cause analysis.[236] Courts could achieve identical results by simply concluding that the harm was unforeseeable or remote, without adding the terms superseding, intervening, supervening, or any of the many similar terms with their nebulous definitions.

Another reason why courts should abandon superseding cause is its potential to impose an additional, difficult burden on the plaintiff.[237] In most of the cases analyzed in this Comment, the plaintiffs performed the intervening negligent acts. However, this will not always be the case. The defendant may allege that a third party's negligence was a superseding cause.[238] If the third party is not a party to the suit, this puts the plaintiff in the unenviable position of having to defend the absent third party while simultaneously trying to persuade the factfinder of the defendant's liability.[239]

The use of superseding cause may even result in an injured plaintiff remaining uncompensated. If the factfinder determines that the second-in-time tortfeasor's act is superseding and that tortfeasor is judgment

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233. *See supra* notes 51–53 and accompanying text.

234. Although this Comment is limited to admiralty, this argument is not similarly limited and applies equally well to torts occurring on land.

235. Phillips, *supra* note 189, at 7 ("[I]t should be sufficient for the jury to simply say that the defendant's act or omission was not the proximate cause of the plaintiff's injury and leave it at that.").

236. *Id.* at 2 ("There is simply no need to decide any issue other than whether the plaintiff's damages were a natural and probable result of this defendant's breach of duty.").

237. *Id.* at 8.

238. *Restatement*, *supra* note 99, at §§ 440–43 (indicating that intervening act may be that of third party).

239. Phillips, *supra* note 189, at 8.

proof, the plaintiff will be unable to recover. If the court analyzed the case without superseding cause, the plaintiff could recover from the first actor in those jurisdictions that impose joint and several liability on joint tortfeasors. In this scenario, the doctrine fails to meet the essential goal of proximate cause: limiting the defendant's liability without undercutting tort law. Although it succeeds in limiting the defendant's liability, it undermines tort law's purpose of compensating the victim.

VI. CONCLUSION

The *Reliable Transfer* Court correctly replaced the outmoded divided damages rule with pure comparative fault in admiralty collision cases. In doing so, it appropriately overruled the major-minor fault rule, which excused a party's fault merely because it was slight. In *Sofec*, the Supreme Court upheld the use of superseding cause doctrine in conjunction with the pure comparative fault system. However, the *Sofec* Court did not fully consider the different methods of determining whether a cause is superseding. This failure enabled the Court to confuse the methods and ultimately rely on the one that conflicts with pure comparative fault.

Courts should abandon superseding cause analysis in admiralty. The foreseeability and remoteness methods of analyzing superseding cause focus on traditional notions of proximate cause, which do not conflict with pure comparative fault. Although legally sound, they add nothing but confusion to proximate cause analysis and should be abandoned. The culpability method, on the other hand, is based on degree of fault rather than proximate cause concepts. It directly conflicts with pure comparative fault, which requires that fault be shared among all faulty parties regardless of how significant or slight their negligent conduct. Furthermore, the Court's validation of the culpability method of analyzing superseding cause is inconsistent with its previous rejection of the major-minor fault rule. Abandoning superseding cause in admiralty law would clear the murky waters of proximate cause and allow comparative fault to sail forth unhindered.